

NAVAJO COUNTY

BOARD OF ADJUSTMENT MEETING

September 10, 2003

Board of Adjustment Members

ATTENDED

1. Carla Bowen, Vice Chairperson
2. Harry Hancock

Staff Attendance

1. Alan Knight, Code Enforcement Officer
2. David Ashton, Director
3. Lance Payette, Deputy County Attorney
4. Mary Bradley, Secretary

ABSENT

Bill Arendell

Meeting held at the Board of Supervisors' Chambers, Holbrook, Arizona – Time 10:10 a.m.

Carla Bowen called the meeting of the Navajo County Board of Adjustment to order, and led the Pledge of Allegiance.

Item #1: **Interpretation:** Discussion and possible board action on a request by **James T. Stewart** for an interpretation of Staff findings in regard to commercial use on a particular property in A-General zoning, and the established time period required to allow such use. **Location:** APN: 212-19-046A, T9N, R22E, Section 22, 3542 Hilltop Dr. in the Lakeside area. **Alan Knight** said that the interpretation is for a business that is currently on the property that is owned by William Bulicek (Mr. Knight showed on the map the property in questioned). Mr. Stewart disputes Mr. Bulicek's claim that the property has been grandfathered for a commercial business on the property. Mr. Knight asked the Board to review the evidence and testimony pertaining to the dispute in order to determine the permitted use of the subject parcel. **James Stewart** was in attendance. Mr. Stewart said that he is the petitioner. Mr. Stewart referred to the aerial map, which was taken in 1979, which shows that there was nothing on the property at that time. Mr. Stewart referred to the information that was provided to the Board Members in their packets (aerial map, a letter from Cooper Aerial Survey Co. & letter of intent written by himself, letter written by Mrs. Billy Smith, Wallace Moore, Joanne Hutton, V. R. Peterson, Phyllis McConnell and M. R. Bowers. Mr. Stewart went over various parts of his letter of intent. Mr. Stewart maintained that the property was not grandfathered because it was not taxed for developed property until 1983. **Phillip Gucciardo** spoke in favor for the applicant. Mr. Gucciardo indicated that he bought two lots in the Regal Lakes Pines in 1968 (Lots 34 and 35). Mr. Gucciardo said that he built a house in 1976 and sold it in 1978. Mr. Gucciardo said that he built his present home in 1981. Mr. Gucciardo stressed at no time up until 1980 was there anything on that property other than a well. **Stephen Bergsten** is the attorney and is representing Mr. & Mrs. William Bulicek. **William and Patti Bulicek** was in attendance. Mr. Bergsten cites the Navajo County Zoning Ordinance, Section 2804, Sub Section 2, Sub Section A. Mr. Bergsten referred again to the Navajo County Zoning Ordinance Section 2808 – Appeals. Mr. Bergsten said that Michael Jenkins (Planning & Building Director) rendered a decision for interpretation on August of 1994 for a request made by Mr. Stewart. Mr. Bergsten said this decision was made 9 years ago and Mr. Stewart had the opportunity to appeal this decision 30 days after the rendering of the decision from the Board of Adjustment. Mr. Bergsten indicated that there were 6 individuals that submitted statements to Mr. Jenkins attesting that the property had been used prior to the adoption of the Navajo County Zoning Ordinance. (A discussion ensued at the dais with Mr. Stewart, Mr. Bergsten and Board Members regarding the aerial map.) Mr. Bergsten presented the Board with photos that were taken of Mr. Bulicek's property in 1972 or 1974 (there was no indications of when these photos were taken). In the photos there are shots taken of storage of equipment and culverts. Mr. Bergsten reiterated his previous comments about Mr. Stewart coming back 9 years later requesting an appeal. Mr. Bergsten said that Mr. Stewart felt that the Bulicek should be required to install a 6-foot fence that would segregate his property from his own. Mr. Bergsten commented that Mr. & Mrs. Bulicek had no objection to them placing a 6-foot fence on their property. Mr. Bergsten said that the only impediment to this is getting the cooperation and the consent of the Pinetop/Lakeside Sanitary District, which has an easement that abuts Mr. Stewart's property and Mr. Bulicek's

property (showed on the map where the easement is located). Mr. Bergsten said that this is a grandfathered use and would be an economic hardship if the Board now decides that this use is improper. **Harry Hancock** made a motion that this item had been properly noticed and posted in compliance with Arizona Revised Statutes in Article 29 and that they would allow William Bulicek to go ahead with his project. **Carla Bowen** asked Mr. Hancock for clarification of his motion. Ms. Bowen asked Mr. Hancock if he meant that Mr. Bulicek might continue using the property as he has used it. **Harry Hancock** replied yes. **Carla Bowen** asked if there are any stipulations to this motion. **Harry Hancock** replied no. **Carla Bowen** said that she is familiar with the area and asked Mr. Stewart when he purchased the land was he aware of what the zoning was around him? **James Stewart** replied only on the property that he purchased. **Carla Bowen** said that this is unfair to the person who owned the property for a long period of time to all of sudden have someone come in and say that they do not like this anymore and therefore you need to change your use of the property. Ms. Bowen said that she does understand that this does have an impact to the residential neighbors. Ms. Bowen added that they should add a stipulation that Mr. Bulicek pursues having the area fenced. **Harry Hancock** amended his motion to include the stipulation of the fence to where the equipment is only. **Phillip Gucciardo** said that when he brought the property this was Federal Forest Land. Right now it is a scrap yard. Mr. Gucciardo said that there is scrap aluminum stacked everywhere. Mr. Gucciardo said that this is no longer used for culverts but is a scrap yard, and scrap metal is being processed there. **Stephen Bergsten** said that he would not dispute the fact that aluminum cans are collected there for recycling. **Carla Bowen** made a motion to go into executive session for legal advice with our attorney (recessed at 10:50 a.m. into executive session). **Harry Hancock** seconded the motion. (Re-adjourn from executive session at 10:55 a.m.) **Carla Bowen** asked our attorney to address the audience and explain the legalities. **Lance Payette** explained that he just wanted to let everyone know what the issues were and what a non-conforming use is. Mr. Payette said that the issue of a nonconforming use is what you have in place when the zoning ordinance was adopted. Mr. Payette gave example of a nonconforming use. The issue is, did Mr. Bulicek establish a commercial use as of 1974 as the zoning director found in 1994? If the use today exceeds that, this is an entirely separate issue. **Harry Hancock** made a motion that the interpretation be that commercial use was established, and that a stipulation should be added for fencing. **RECOMMENDED STIPULATION: 1. To pursue an agreement with the Sanitary District in order to build a 6-foot fence around the storage areas.** **Carla Bowen** seconded the motion. Motion unanimously carried.

Item #2: **Variance:** Discussion and possible board action on a request by, **Michael McDonough & Sandra Pendleton** for a variance to reduce the rear setback from 20' to 10', and the east side from 10' to 1' to allow the garage to remain, and to legalize the house that existed prior to purchase. **Location:** APN: 211-67-036, T8N, R23E, Section 11, 4157 Skyline Terrace, Pinetop, AZ. **Alan Knight** gave a case history of the project and presented a map showing the general area and the site plan. Mr. Knight said that the encroachment is within 1.4 feet of the property line. The original house was built in 1972 prior to the present ownership. Staff recommends approval based on the terrain of the property. **Michael McDonough & Sandra Pendleton** was in attendance. **Michael McDonough** said that there was no other place to put the garage. Mr. McDonough explained that when they built the garage the contractor and the building inspector said that this is where the garage should go. Mr. McDonough indicated that either it was not noticed or not known that the deck was covered. Mr. McDonough said that the garage could be where it is if the deck was not covered, and since it was covered it encroached on the setbacks. Mr. McDonough said that he did not know this at the time and neither did the contractor or the inspector. **Carla Bowen** is looking at the building permit and sees that it is signed off by Bob McClanahan our Chief Building Inspector. Ms. Bowen indicated that Mr. McClanahan should have known about this. **Alan Knight** explained that a site plan was turned in by the contractor showing that the setbacks are 15 feet from the property line. This site plan, as presented in 1999, was incorrect and it also showed the rear setbacks were 20 feet, which is also incorrect. **Carla Bowen** asked if the property was surveyed and were the pins located before this was built. **Michael McDonough** said that he did not have a survey done. **Mark Burns** spoke in opposition. Mr. Burns said that he is the son of Mary Joan Burns who owns Lot 37. Mr. Burns indicated that he contacted the county about the possibility of there being a setback violation. The county suggested that a survey should be done. Mr. Burns indicated that they contracted Felix Steele to survey the property. Mr. Burns commented on the setbacks and said that they are not even close to this and how the hearing is backwards (the garage is already built and were having the hearing for the variance after the fact). Mr. Burns also spoke about why the county has setbacks. **Sandie Pendleton** wanted the Board to know that they did not attempt to circumvent the process. Ms. Pendleton said that they hired a contractor who they thought knew what he was doing. They also had the building inspector come out, and they applied for the proper permits. Ms. Pendleton said that they would never have gone forward if they had known there was a problem. **Carla Bowen** agreed with what Ms. Pendleton was saying. Ms. Bowen indicated that there is a building permit that specifically states what the setbacks are and the building inspector had signed off on it. The site plan that was presented to the county from the contractor would comply with the building permit and it appears that the contractor has arbitrarily gone in and changed everything without any kind of permission from

anyone. Ms. Bowen asked our attorney from a legal standpoint where we have the drawings and everything is permitted and then it is completely ignored; she does not see where the county has any liability in this. **Lance Payette** said normally we wouldn't have liability unless we are grossly negligent. Mr. Payette said that the variance has to be looked at as any other variance, and does it meet the criteria for a variance. **Carla Bowen** made a motion to approve the variance based on the terrain with the stipulation that no additional structure can be built within any setbacks on the property. Ms. Bowen asked staff to send a letter to the contractor and to the Building Inspection Department during their inspection process that they have the proper documents with them at the job site. Ms. Bowen asked the county attorney to work with Development Services on this. **RECOMMENDED STIPULATION:** *1. No additional structures can be built within any setbacks on the property.* **Harry Hancock** seconded the motion. Motion unanimously carried.

Item #3: **Use Permit:** Discussion and possible Board action on a request by **Perry Dickerson** for a Use permit to allow the building of a home on the same 1 acre parcel to house an invalid relative. **Location:** APN: 207-18-060B, T12N, R16E, Section 25, 1954 Single Tree, Overgaard. **Alan Knight** said that he just discovered that the zoning, which is R1-43, does not allow for any second residences. Mr. Knight indicated that he had spoken to the applicant and his money has henceforth been refunded. **Carla Bowen** requested that this item be rescinded from the record.

Item #4: **Use Permit:** Discussion and possible Board action on a request by **Edwin A. Roach** for a use permit to allow the construction of a guesthouse on the same 1.28 acre parcel. **Location:** APN: 209-16-026, T10N, R21E, Section 3, 1135 Lone Pine Dam Rd., Show Low. **Alan Knight** gave a case history of the project and presented a map showing the general area and the site plan. Mr. Knight indicated that staff has received one letter in opposition. Mr. Knight explained that the reason that this person is opposing this was because the house has been there for a considerable amount of time illegally. Mr. Knight indicated that they did not know how it got there; however there was a permit taken out in 1985 (permit #3914). Mr. Knight said that he did not know when the first house was actually built. Mr. Knight said that the only problem that he came across was that there were no records of a septic system. Mr. Knight indicated that the shell of the house is completed but the permit shows the inspections were done up to the framing. Staff recommends approval with stipulations. Mr. Knight stated that the reasoning for this was that the other options would be to tear the house down and remove it or split the property in half. **Edwin Roach** is the applicant and he was in attendance. Mr. Roach presented the Board with a photo of his homes. Mr. Roach explained that the house on the left of the photo is an existing structure was built in 1979 or 1980. Mr. Roach said in 1987 they obtained a building permit to build a guesthouse and Navajo County building officials approved all the work. Mr. Roach said that there is a 1,000 gallon septic tank in place. Mr. Roach indicated that work was stopped at various times due to medical, financial and time related issues. **No one came forward to speak in favor or opposition on this request.** **Carla Bowen** made a motion to approve the Use Permit with the stipulations stated by staff. **RECOMMENDED STIPULATIONS:** *1. Septic System will be properly permitted and installed, and/or certified by a licensed contractor. 2. Neither residence shall ever be used as a rental. 3. All building permits must be secured prior to construction. 4. Setbacks must be met as per the area's zoning requirements.* **Harry Hancock** seconded the motion. Motion unanimously carried.

Item #5: **Use Permit:** Discussion and possible Board action on a request by **Richard & Alyce Hileman** for a use permit to allow the construction of a guesthouse on the same 12 acre parcel to house visiting relatives. **Location:** APN: 209-01-007A, T10N, R20E, Section 17/20, 614 Petersen Lane, Pinedale. **Alan Knight** gave a case history of the project and presented a map showing the general area and the site plan. Mr. Knight explained that the applicants would like to build a car/trailer port and they also want to construct with this a guesthouse along side of it. Mr. Knight indicated that from the road you could not see the house and there would be no impact on the neighborhood. Staff recommends approval with stipulations. **Richard Hileman** is the applicant and he was in attendance. Mr. Hileman said that this is pretty much straight forward what was presented. **No one came forward to speak in favor or opposition on this request.** **Harry Hancock** made a motion was to approve the Use Permit with the stipulations stated by staff. **RECOMMENDED STIPULATIONS:** *1. Septic System will be properly permitted and installed, and/or certified by a licensed contractor. 2. Neither residence shall ever be used as a rental. 3. All building permits must be secured prior to construction. 4. Setbacks must be met as per the area's zoning requirements.* **Carla Bowen** seconded the motion. Motion unanimously carried.

Item #6: Possible approval of the minutes for the **June 11, 2003** meeting. A motion was made by **Harry Hancock** to approve the minutes. **Carla Bowen** seconded the motion. Motion unanimously carried.

Item #7: Board Members comments and/or directions to staff. Board Members may use this time to offer additional comments regarding any item on this agenda or any other topic, and the Board may direct Development Services Department staff to study or provide additional information on topics of the Boards choosing.

With there being no further business to come before the Board of Adjustment, the meeting was adjourned at 11:45 a.m. A motion was made by **Harry Hancock** to adjourn. **Carla Bowen** seconded the motion. Motion unanimously carried.

The Board reserves the right to adjourn into an executive session when needed, per A.R. S. 38-431.03 (A)(3) for legal counsel on the above matter.

NOTE: A copy of the agenda background material provided to the Board Members (with exception of material relating to possible executive sessions) and taped proceedings are available for public inspection at the Development Services Office, Navajo county Complex, Holbrook, Arizona, and Monday through Friday, 8:00 a.m. to 5:00 p.m.

Signed this _____ day of _____, _____

Signed: _____

**Chairman, Navajo County
Board of Adjustment**

ATTEST:

Development Services Secretary